

GETTING IN THE WEEDS WITH ANTI SHORT-TERM ACCOMMODATION BY-LAWS IN NSW

The Strata Schemes Management Act in NSW was updated on the 10th of April 2020 and included a new ability for Owners Corporations to create a by-law that could prohibit short-term accommodation in strata schemes. For many managers operating short-term lettings this appeared to be another sky is falling moment on top of all the other anti Airbnb legislation that has been creating problems for Management Rights operators in NSW.

By passing a special resolution in accordance with section 137A of the Act an Owners Corporation can prohibit use of a lot in accordance with a “short-term rental accommodation arrangement”. At first, a plain English reading of section 137A will generally lead you (and a committee of owners) to believe that this means that by passing a special resolution the Owners Corporation can prevent all kinds of short-term accommodation. This is not actually the case however.

Section 137A specifically uses the phrase “short-term rental accommodation arrangement” when describing the type of short-term accommodation that can be prohibited under the by-laws. This phrase is not just a general description but actually has a specific meaning defined in the Fair Trading Act. It does not simply mean any and all arrangements that might be made with a guest to stay short-term in a lot. Furthermore, what is or isn't a “short-term rental accommodation arrangement” is subject to exceptions that are found in section 11C of the Fair Trading Regulations.

So, after wading through three different pieces of legislation, you can discover that section 137A gives the Owners Corporation a right to create a by-law that prohibits short-term accommodation **provided** the lot being used for short-term accommodation is not “tourist and visitor accommodation”.

What is significant about the phrase “tourist and visitor accommodation”? This is defined in the Standard Instrument (Local Environmental Plans) Order and is used to describe the types of buildings that have Council development approval to be used on a short-term basis (amongst other things). This includes buildings approved for use as hotel or motel accommodation, or use as serviced apartments.

What this then means is that if a lot in a strata scheme has development approval to be used as a form of tourist or visitor accommodation, the arrangements that an owner enters with guests to use that lot on a short-term basis, do not fall into the definition of a “short-term rental accommodation arrangement” and therefore are not captured by by-laws made under section 137A of the Act.

If you operate short-term lettings in NSW and your building is approved for short-term letting in the Council development approval, be comforted by the fact that the Owners Corporation cannot simply pass a special resolution to prohibit short-term letting in your building.

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